

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

CAPE URGENT CARE, P.C.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:06CV00007LMB
)	
MERCEDES-BENZ USA, L.L.C.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the court on the Petition of Plaintiff Cape Urgent Care, P.C., removed from the Circuit Court of Cape Girardeau County, alleging Defendant Mercedes-Benz USA, L.L.C. failed to comply with the terms of an express warranty and violated the Missouri Lemon Law, RSMo. § 407.560 et seq. This case has been assigned to the undersigned United States Magistrate Judge pursuant to the Civil Justice Reform Act and is being heard by consent of the parties. See 28 U.S.C. § 636. Currently pending before the court is Defendant’s Motion to Dismiss (Document Number 5). Also pending is Plaintiff’s Motion for Leave to Amend Complaint. (Doc. No. 16).

In its Motion to Dismiss, defendant claims that plaintiff failed to file its action within the time permitted by the statute of limitations for Missouri Lemon Law actions. Defendant further argues that plaintiff does not meet the definition of a “consumer” as defined in RSMo. § 407.560(3) of the Missouri Lemon Law because defendant is a corporation. Plaintiff has filed Plaintiff’s First Amended Complaint, in which it alleges a general warranty action. Plaintiff no

longer asserts a claim under the Missouri Lemon Law. Defendant has not filed a response to plaintiff's Motion for Leave to Amend Complaint. As such, plaintiff's Motion for Leave to Amend Complaint will be granted, and defendant's Motion to Dismiss will be denied.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to Amend Complaint (Doc. No. 16) be and it is **granted**.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (Doc. No. 5) be and it is **denied**.

Dated this 14th day of June, 2006.



LEWIS M. BLANTON
UNITED STATES MAGISTRATE JUDGE